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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

Supreme Court, U.S.
FILED
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JAMES H. McKENNEY,
Clerk

No. 666

The Louisville Trust Company,
Receiver of Evening Post Company, . *Appellant*

vs.

Stuart R. Knott, et al., ... *Appellees*

BRIEF FOR APPELLANT

JOHN L. DODD,
DAVID W. BAIRD,
Attorneys for Appellant

J. C. DODD,
AARON KOHN,
T. W. SPINDLE,
Of Counsel

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 389.

The Louisville Trust Company, Receiver of the Evening Post Company, Appellant,

To

Stuart R. Knott, Evening Post Company, Columbia Finance & Trust Company, R. W. Knott, B. G. Boyle, E. Q. Knott, Lewis C. Humphrey, Receiver of the Evening Post Company, and Home & Farm Publishing Company, Appellees. Humphrey, Burnett & Humphrey and Helm, Bruce & Helm, their attorneys. } Notice.

Greeting:

You, and each of you, are hereby notified that in the Supreme Court of the United States, at its October term, beginning on Monday, the 12th day of October, 1903, and on the said 12th day of October, 1903, during motion hour, the appellant, in the above styled cause, will move the court to advance and submit the same pursuant to

the provisions of Rule XXXII of the said court, and you are hereby handed a copy of the appellant's brief to be used in the said court and filed on the said day.

The Louisville Trust Company, Receiver
of the Evening Post Company.
By Dodd and Dodd,
John L. Dodd,
Kohn, Baird & Spindle,
David W. Baird,
Its Attorneys.

We hereby acknowledge service of the above notice and receipt of a copy of the brief for appellant this September 19, 1903.

Alex. P. Humphrey,
James P. Helm,
Attorneys for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1903.

The Louisville Trust Company, Receiver of the Evening Post Company, Appellant, vs. Stuart R. Knott, et al., Appellees.	No. 389.

Motion to Advance and Submit under Rule 32.

Now comes the appellant, The Louisville Trust Company, as receiver of the Evening Post Company, by John L. Dodd, Esq., and David W. Baird, Esq., its attorneys of record, and files written notice to the appellees, the service of which was accepted, in writing, on September 19, 1903, by Alex. P. Humphrey, Esq., and James P. Helm, Esq., their attorneys of record, and pursuant thereto moves the court to advance and submit this cause accordingly as authorized by the provisions of Rule 32 of this court, having heretofore filed with the clerk of this court twenty-five copies of a printed brief for the appellant.

John L. Dodd,
David W. Baird,
Attorneys for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1903.

THE LOUISVILLE TRUST COMPANY, RECEIVER OF THE EVENING POST COMPANY, - - - - - *Appellant*,

vs. No. 389.

STUART R. KNOTT et al., - - - - - - - - *Appellees.*

BRIEF FOR APPELLANT.

The only question in issue on this appeal is a question of the jurisdiction of the court below over the administration and settlement of the trust estate of the Evening Post Company.

Two suits were instituted by beneficiaries to settle the same trust estate, in courts of concurrent jurisdiction sitting in the same city and county, and in each of which a different receiver was appointed to take charge of the same property.

The State Court suit was instituted May 12, 1903, and the Federal Court suit was instituted May 27, 1903. The appellant is the receiver appointed by the State Court, and the appellees are the parties to the Federal Court suit and the receiver therein appointed.

STATEMENT.

The Evening Post Company is a Kentucky corporation, with a capital stock of $60,000, divided into 600 shares of the par value of $100.00 each. By the terms of its charter its corporate life began May 1, 1878, and was limited to twenty-five years, terminating May 1, 1903.

By the general law of Kentucky it is provided, as follows:

> "When any corporation expires by the terms of the articles of incorporation, or by the voluntary act of its stockholders, it may thereafter continue to act for the purpose of closing up its business, but for no other purpose; and it shall be the duty of the officers to settle up its affairs and business as speedily as possible; and they shall cause notice to be published, for at least once a week for four consecutive weeks, in some newspaper printed and published in the county, if any, of the fact that it is closing up its business; and all debts and demands against the corporation shall be paid in full before the officers receive anything." (Section 561, Ky. Statutes.)

On April 30, 1903, all of the officers and stockholders of the Evening Post Company assembled together and adopted the following resolutions, appointing the Columbia Finance & Trust Company of Louisville, as trustee, to liquidate, wind up and settle the affairs of the said expiring corporation, to-wit:

"BE IT RESOLVED:

> "(1) That the Columbia Finance & Trust Company be and it is hereby appointed liquidator of the affairs of the corporation, with directions to operate

for the use of the stockholders the affairs and business of said corporation as they have been operated until the property can be properly advertised and sold and the possession thereof delivered to the purchaser.

"(2) That prior to the said sale liquidator shall cause to be made for the use of the stockholders a comprehensive statement of the assets and liabilities of the corporation, and furnish each stockholder with a copy of said statement.

"(3) That the said liquidator shall in its advertisement specify the nature of the articles to be sold, and shall make such sale for cash to be paid on the delivery of possession, and shall require of the purchaser that he deposit a certified check for an amount equal to one-third of the total purchase price which the liquidator shall hold and credit upon the purchase price when the sale is consummated, or if for any reason it shall be set aside, return to the bidder. If said bidder to whom the property is knocked down shall fail at once to deliver to the liquidator the certified check as herein provided, the liquidator shall immediately re-sell the property and refuse to receive bids from said former bidder.

"(4) Said liquidator may, in his discretion, employ an auctioneer or other agents necessary or proper to be used in the sale of the property.

"(5) Until said sale, and during the operation of said property, said liquidator is given full authority and permission to employ such agents and persons as may be necessary to properly, conveniently and economically operate the company, and keep an account of all its expenses and take vouchers therefor. And after the property has been fully administered it shall make out a comprehensive account of its actings and doings, and shall furnish a copy thereof to each of the stockholders.

"(6) The said liquidator shall, from the proceeds of the sale of the property, pay all the debts of the corporation, and the balance, if any, shall be distributed among the stockholders according to their legal rights." (Pr. Rec. pp. 2-3).

This plan was thus adopted in lieu of the said statutory method, to enable the said officers to bid on and buy in the said property.

On the same date the said Columbia Finance & Trust Company accepted the said trust and entered upon its execution.

The estate of W. N. Haldeman, deceased, was the owner of 48 shares of the capital stock of the Evening Post Company. Bruce Haldeman, Bennett H. Young and Elizabeth Haldeman, as executors and executrix of his will, desired to inquire into and ascertain the financial condition of the said Evening Post Company, to enable them to form some estimate of the intrinsic value of its stock, and, to that end, duly made application to inspect its books, papers and affairs, which was peremptorily refused.

On May 12, 1903, the said personal representatives filed their complaint in equity in the Jefferson Circuit Court of Kentucky against the said trustee and the said Evening Post Company, its creditors and stockholders, so far as then known to them, wherein they set forth the terms of the said trust and the denial of their rights as stockholders, and claimed that a necessity had arisen for the administration and liquidation of the said trust estate in a court of equity where the assets and liabilities could be properly ascertained, administered, marshaled and sold, and a fair,

just and proper accounting and settlement could be had. (Pr. Rec. pp. 25-31).

The prayer of the said complaint reads as follows:

"WHEREFORE, the premises considered, the plaintiffs pray for a settlement of the accounts of the Evening Post Company, and of the Columbia Finance & Trust Company as liquidator thereof herein, and that this cause be referred to the commissioner of this court to audit, state and settle the accounts of the Columbia Finance & Trust Company, as trustee or liquidator of the affairs and business of the said Evening Post Company; that a full, true and correct accounting of the business and affairs of the said Evening Post Company, and of the liabilities against the same, be ascertained and reported, and the assets sold and disposed of and distributed amongst the parties thereto according to their respective interests.

"Plaintiffs further pray that pending this action, and until the final liquidation of the affairs of the Evening Post Company and the sale of its plant and assets, that the court herein determine as to whether or not the affairs of the said Evening Post Company should be continued in operation, and, if so, that the operation of the said plant be conducted under and subject to the orders of the court herein.

"And the plaintiffs further pray that a mandatory preliminary order be entered herein commanding and directing the defendants, and each of them, to allow the plaintiffs reasonable access to and an examination of the books, papers, documents and affairs of the said Evening Post Company, including all documentary information in connection therewith which is in the possession of the defendants or any of them.

"And the plaintiffs further pray for their costs herein expended, and for all such proper and equitable

relief, as the nature of the case may demand." (Pr. Rec. p. 30).

Process was forthwith issued and served on all of the defendants. On May 19, 1902, the plaintiffs in that suit, pursuant to their said prayer, moved the court for a preliminary order, commanding and directing the defendants, and each of them, to allow the said plaintiffs reasonable access to and an inspection of the books, records and documents of the said Evening Post Company touching its assets, liabilities and business affairs, to which motion all of the defendants appeared and objected, and the same was assigned for hearing to May 23, 1903. (Pr. Rec. 31).

On May 23, 1903, all of the defendants demurred to the said complaint and also filed answers to the same. (Pr. Rec. pp. 32-38.) They made no objection to the jurisdiction of the said State Court, but, on the contrary, expressly submitted themselves to the said jurisdiction, as is evidenced by the following extract from the answer of the said trustee:

> "The defendant says it submits itself to the jurisdiction of the court, and will of course promptly obey all orders of the court." (Pr. Rec. p. 38).

The hearing of this motion was commenced Saturday, May 23, 1903, and, there not being time to complete the same on that day, the further hearing was adjourned to May 25, 1903, and, there still not being time to complete the hearing on that date, another adjournment was had until May 30, 1903, when the hearing thereof was completed and it was submitted. Thereafter, on June 4, 1903,

an elaborate opinion was filed by the chancellor of the state court sustaining the said motion. (Pr. Rec. pp. 38-47.)

While the said hearing was in progress, and just before its completion, on May 26, 1903, the appellee, Stuart R. Knott, filed his suit at law, in the United States Circuit Court for the Western District of Kentucky, against the said Evening Post Company demanding judgment for $6,000.00 in debt with interest thereon from April 30, 1903. To this suit the said Evening Post Company forthwith entered its appearance and consented that judgment might be immediately entered, which was accordingly done. (Pr. Rec. pp. 23-24).

On the next day, May 27, 1903, the said appellee, Stuart R. Knott, as such judgment creditor, filed this suit, in the nature of a creditor's bill, against the same trust estate and defendants as in the aforesaid state court, but he entirely ignored the pendency of the said state court case. The prayer of his bill reads as follows:

> "The premises considered, the complainant prays: That this court will at once appoint a receiver herein and direct the parties hereto to deliver into his hands all the rights, properties, franchises, books of accounts, records, documents, choses in action and all other things now or lately belonging or appertaining to the Evening Post Company, and whether in the hands of the said Evening Post Company, or of the said Columbia Finance & Trust Company, or the said R. W. Knott, B. G. Boyle or E. Q. Knott; that the said receiver be directed forthwith to report to this court what such property is and what arrangement can be made for the continued publication of said paper until a decree can be entered directing a sale herein; that

this court ascertain what debts are due by the said Evening Post Company, by reference to a commissioner or other proper proceeding; that it will apply to the payment of the said debts the property of the said Evening Post Company in the just order of priorities, if priorities there be, and will provide for costs and expenses of this suit; that all other and proper equitable relief may be had looking to the administration of the estate of the said Evening Post Company and the payment of its just debts; and to that end, the sale of its property and the bringing of money produced by such sale into the registry of the court for distribution among the creditors." (Pr. Rec. p. 5.)

Simultaneously with the filing of the said bill a motion was made by the said complainant to appoint a receiver, and an order of injunction was forthwith entered by the lower court, without bond, reading as follows:

"Pending the hearing of said motion, it is ordered by the court that the said Columbia Finance & Trust Company be and it is restrained from disposing of any part of said property and from delivering possession of any part thereof to any person or officer otherwise than in such manner as may be approved by this court." (Pr. Rec. p. 8).

All of the defendants to the said bill promptly entered their appearances and filed answers consenting to the appointment of a receiver of the property and assets of the Evening Post Company as prayed. (Pr. Rec. pp. 9-10).

On the next day, May 28, 1903, the said court appointed the appellee, Lewis C. Humphrey, receiver. (Pr. Rec. p. 8).

It would be difficult to conceive of a more speedy pro-

ceeding to anticipate and circumvent the orderly process of the state court than the action aforesaid.

The plaintiffs, in the state court proceeding, had no notice whatever of the said litigation until after the said receiver had been appointed and qualified. The defendants, in the state court proceeding, thereafter promptly interposed the said federal court receivership and possession of the said trust estate as an excuse for their disobedience of the order of the state court. (Pr. Rec. p. 48).

The state court, maintaining that its jurisdiction to administer and settle the said trust estate first attached, appointed the appellant Louisville Trust Company as its receiver, and directed it to take possession and charge of the said entire trust estate. (Pr. Rec. pp. 52-53).

When it was, thereafter, made to appear to the said state court that the appellees refused to obey its order, because of the said federal court receivership, it entered the following order directing the appellant to intervene in said federal court suit and claim the said trust estate:

> "It now appearing to the court that more than two weeks subsequent to the institution of this suit to settle the trust estate of the Evening Post Company, therein described, and after all the defendants had answered expressly submitting themselves to the jurisdiction of this court, certain proceedings were instituted in the United States Circuit Court for the Western District of Kentucky against the said Evening Post Company, et al., for the settlement of the same trust estate herein involved, which were instituted in the name of Stuart R. Knott, against the said Evening Post Company and others, wherein the proceedings in this action were ignored, and wherein, without notice to plaintiffs, a receiver was appointed to take charge

of the same trust estate herein involved, and this court being of the opinion that its jurisdiction to administer, settle and liquidate the said trust estate first attached, and that to enable it to grant the relief sought by plaintiffs herein, it is necessary to assume the possession and control of all of the property belonging to the said Evening Post Company described in the petition, therefore, in conformity with that spirit of comity which exists between state and federal courts of concurrent jurisdiction, and in order that there may be no unseemly conflict, it is now ordered that the said Louisville Trust Company, receiver of the said Evening Post Company and its property, under the order of appointment in this case, do intervene in said case of Stuart R. Knott *versus* Evening Post Company, et al., pending in the said federal court, and there claim the said trust estate for administration and settlement in this suit, and test and contest the question of the prior jurisdiction of this court over the subject matter in such manner and form as it may be advised by its counsel." (Pr. Rec. p. 59).

Pursuant to the said directions the Louisville Trust Company, as receiver, filed its intervening petition in this case, claiming the right to the custody and possession of the said trust estate, and moved the lower court to vacate the order appointing its receiver, and to direct the said receiver to deliver, turn over and surrender to the said Louisville Trust Company, as receiver of the said state court, all of the assets and property of the Evening Post Company in his custody, possession and control, including the books, papers and documents pertaining to its business and affairs. (Pr. Rec. pp. 13-23).

The lower court allowed the said petition to be filed,

but subsequently overruled the said motion and at the same time dismissed the said petition. (Pr. Rec. p. 63).

In the said intervening petition it is averred that the federal court suit was instituted at the instance and request and by the procurement of the defendants to the then pending state court suit *for the express purpose of ousting the said state court of its previously acquired jurisdiction*, and that it was railroaded through, without notice to the plaintiffs in the said state court suit, in order to defeat the objects thereof. It is alleged therein, among other things, as follows:

> "That to enable the said state court to grant any of the relief sought in the said state court suit it became absolutely necessary and indispensable that the said state court should take and assume actual possession of the said trust estate of the said Evening Post Company and to administer, marshal and liquidate the same according to the prayer of the petition in the said state court." (Pr. Rec. p. 21).

It is therein further alleged:

> "That the said Jefferson Circuit Court, Chancery Branch, First Division, is a court of equity of concurrent jurisdiction with this court, and that the sole and entire purpose of the complainant, and defendants in the institution and prosecution of this suit, was and is to oust the said Jefferson Circuit Court, Chancery Branch, First Division, of its lawful jurisdiction, and to divest it of the lawful custody of the property and estate of the said Evening Post Company, and that the subject matter of controversy in the said cause in the state court is identical with the subject matter of controversy in this suit; that if this court, through its

receiver aforesaid, continues in the custody, possession and control of the said estate of the Evening Post Company the effect thereof will be to supersede and deprive the said Jefferson Circuit Court, Chancery Branch, First Division aforesaid, of its right to proceed, try and determine the cause of action therein asserted, involving identically the same subject matter and the administration and liquidation of identically the same trust estate between the same parties." (Pr. Rec. p. 22).

None of these allegations were denied by any of the appellees. The prayer of the said intervening petition reads as follows:

"Wherefore, your petitioner prays permission to file the foregoing pleading in obedience to the express directions of said state court, and that this court enter an order vacating its order appointing Lewis C. Humphrey, receiver, and directing the said Lewis C. Humphrey to turn over, surrender and deliver to your petitioner all of the estate and properties of the said Evening Post Company of every kind, character and description, including its books, papers, accounts and documents pertaining to its business, to the end that the said trust estate shall be administered, closed and wound up by the said Jefferson Circuit Court, Chancery Branch, First Division, in manner and form as required by law; and to the further end that, so far as the said trust estate is concerned, further proceedings in this suit shall be stayed, suspended and abated and the hands of this court held in abeyance until the said state court, first obtaining jurisdiction, has terminated the case pending before it. Your petitioner prays for its costs herein expended, and for all such proper and equitable relief, both general and special, as the nature of the case may demand." (Pr. Rec. p. 22-23.)

The court below overruled appellant's motion for possession and at the same time absolutely dismissed the said intervening petition on the ground that its jurisdiction superseded and terminated the right of the plaintiffs in the said state court suit to further prosecute the same.

II.

ERRORS ASSIGNED AND RELIED ON.

The following is the assignment of errors filed by the appellant in the lower court:

I.

"The said Circuit Court of the United States for the Western District of Kentucky erred in deciding that its jurisdiction over the estate of the said Evening Post Company is prior to and exclusive of the previously acquired jurisdiction thereof of the Jefferson Circuit Court, Chancery Branch, First Division.

II.

"The said court erred in denying the motion of the Louisville Trust Company, receiver, to compel Lewis C. Humphrey, receiver of this court, to turn over to it the estate of the said Evening Post Company in his custody and possession.

III.

"The said court erred in denying the motion of the said Louisville Trust Company, receiver, to vacate the order appointing Lewis C. Humphrey receiver of the said Evening Post Company.

IV.

"The said court erred in retaining jurisdiction of the subject matter of the estate of the said Evening Post Company, and especially of its estate, books, papers and assets and documents to the exclusion of the previously acquired jurisdiction of the Jefferson Circuit Court, Chancery Branch, First Division, of the State of Kentucky.

V.

"The said court erred in dismissing the intervening petition of the said Louisville Trust Company, receiver, and adjudging the costs incurred therein in favor of the complainant, Stuart R. Knott, herein.

VI.

"The said court erred in refusing to grant the relief accordingly as prayed and moved for by the Louisville Trust Company, receiver of the Evening Post Company, under appointment of the Jefferson Circuit Court, Chancery Branch, First Division." (Pr. Rec. pp. 82-83).

Tersely stated, the appellant's contention, under these specifications, is, that where there are two suits pending in different courts of concurrent jurisdiction which involve and affect the same subject matter, and where the jurisdiction of neither is complete or effectual unless it can exercise exclusive jurisdiction over the entire subject matter, then the jurisdiction of that court whose interposition is first invoked is exclusive of the other; and that this rule is not limited, in its application, to cases where the subject

matter has been actually seized under judicial process before the second suit is begun, but applies to all suits brought to administer trusts and to liquidate, settle and distribute insolvent estates, during the progress of which and to afford the relief prayed, the court may be compelled to assume the possession and control of the entire trust estate.

III.

ARGUMENT.

We claim that the Federal Circuit Court, sitting at Louisville in the Western District of Kentucky, has no supervisory or revisory power over suits properly instituted and pending in a state circuit court of concurrent jurisdiction over the same territory.

Section 720 of the U. S. Rev. Statutes reads as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

In Haines vs. Carpenter, 91 U. S., 254, 257, this court said:

> "The great object of the suit is to enjoin and stop litigation in the state courts and to bring all the litigated questions before the circuit court. This is one of the things which the federal courts are expressly prohibited from doing. . . . The state courts have full and ample jurisdiction, and no suffi-

cient reason appears for interfering with their proceedings."

In Sargent vs. Helton, 115 U. S., 350, this court said:

> "The sole purpose of the bill in this case was to restrain the execution of an order of the Circuit Court for the County of Escambia, a court of the State of Alabama, and no relief which, upon the averments of the bill, this court could grant would be effectual without the writ of injunction prayed for."

In Taylor vs. Carryl, 20 How., at page 595, this court said:

> "It forms a recognized portion of the duty of this court to give preference to such principles and methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union so that they may co-operate as harmonious members of a judicial system co-extensive with the United States, and submitting to the paramount authority of the same constitution, laws and federal obligations. The decisions of this court that disclose such an aim, and that embody the principles and modes of administration to accomplish it, have gone from the court with authority, and have returned to it, bringing the vigor and strength that is always imparted to magistrates, of whatever class, by the approbation and confidence of those submitted to their government."

In Wiswall vs. Sampson, 14 How., 65, and In Re Tyler, 149 U. S., 181, this court said:

> "When a receiver has been appointed, his possession is that of the court, and any attempt to disturb it, without the leave of the court first obtained, will be a contempt on the part of the person making it."

In Peck vs. Jenness, 7 How., 624, this court stated the rule to be as follows:

> "It is a doctrine of law too long established to require a citation of authorities, that, where a court has jurisdiction, it has a right to decide every question which occurs in the case, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and that, where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another court. These rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction and thus the parties be without remedy, being liable to a process for contempt in one, if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely enbarrassing to the administration of justice."

The cases of:

Orton vs. Smith, 18 How., 266.
Freeman vs. Howe, 24 How., 450.
Buck vs. Colbath, 3 Wall., 334.
Covell vs. Hyman, 111 U. S., 182-3.
Gumbel vs. Pitken, 124 U. S., 143.
Moran vs. Sturges, 154 U. S., 256.
Central Bank vs. Stevens, 169 U. S., 432.
Shields vs. Coleman, 157 U. S., 178, 182.
Harkrader vs. Wadley, 172 U. S., 148.
Farmers Loan Co. vs. Lake St. Rd. Co., 177 U. S., 61,

among many others, reiterate and apply the above salutary rule.

In Harkrader vs. Wadley, *supra*, the rule is stated in this language:

> "Where a state court and a court of the United States may each take jurisdiction of the matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases."

In Merritt vs. American Steel-Barge Co., 79 Fed. Rep., 231, 24 C. C. A., 530, the Court of Appeals for the Eighth Circuit, after stating the rule as above, said:

> "The doctrine in question is not limited in its application to cases where property has actually been seized under judicial process before a second suit is instituted in another court, but it applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in all other suits of a similar nature, where in the progress of the litigation, the court may be compelled to assume the possession and control of specific personal or real property. In cases of the latter kind, the rule is that the tribunal which first acquires jurisdiction of the cause by the issuance and service of process is entitled to retain it to the end, without interference or hindrance on the part of any other court. And this rule, in its application to federal and state courts, being the outgrowth of necessity, is a principle of right and of law which leaves nothing to the discretion of a court, and may not be varied to suit the convenience of litigants."

In Farmers Loan Co. vs. Lake St. Rd. Co., 177 U. S., 61, this court, while discussing and applying this principle, said:

> "This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons. Nor is this rule restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts or liquidate insolvent estates, and in suits of a similar nature where, in the progress of the litigation, the court may be compelled to assume the possession and control of the property to be affected."

In Heidritter vs. Oil-Cloth Co., 112 U. S., 294, 305, this court through Mr. Justice Matthews, in speaking of the principle for which we are contending, said:

> "It is merely an application of the familiar and necessary rule, so often applied, which governs the relation of courts of concurrent jurisdiction, where it concerns those of a state and of the United States, constituted by the authority of distinct governments, though exercising jurisdiction over the same territory. That rule has no reference to the supremacy of one tribunal over the other, nor to the superiority in rank of the respective claims, in behalf of which the conflicting jurisdictions are invoked. It simply requires, as a matter of necessity, and, therefore, of comity, that when the object of the action requires control and dominion of the property involved in the litigation, that court which first acquires possession,

or that dominion which is equivalent, draws to itself the exclusive right to dispose of it, for the purposes of its jurisdiction."

In the case of Adams vs. Mercantile Trust Company, 66 Fed. Rep., 621, 30 U. S. App., 204, 15 C. C. A., 1, this principle was applied, and the court held that a federal court may, in comity, surrender property to the receiver of a state court, saying:

> "We are of the opinion that the court below erred in not granting the application of the receiver of the state court for the possession of the property which is so clearly necessary for the further exercise of that court's jurisdiction, and to which possession it is so clearly entitled."

In Hatch vs. Bancroft, 67 Fed. Rep., 807-8, the court after reviewing the authorities, said:

> "The authorities requiring the observance of the rule of comity universally obtaining between courts of concurrent jurisdiction, and forbidding this court to interfere under such circumstances, are numerous. Judd vs. Telegraph Co., 31 Fed. Rep., 182 (and numerous other citations).
>
> "In the last case a motion was made for a receiver and injunction *pendente lite* by a creditor in the federal court who sought to get in the assets and distribute the property of an insolvent corporation among its creditors where suits had already been brought in the state court by other creditors to obtain the same relief. The bill also contained allegations of grave irregularities and proceedings in the state court, which were evidently advanced to sustain the application for the interference of the federal court. Judge Wallace

applied the rule that the state court, having first taken cognizance of the controversy, was entitled to retain jurisdiction to the end of the litigation, and to take possession and control of the subject matter of the investigation, to the exclusion of all interference of other courts of co-ordinate jurisdiction.

"It is manifest from these authorities that until the proceedings in the suit pending in the state court have come to an end, and the property in controversy is no longer in the possession of that court, this court is powerless to afford complainant relief. The conditions require that this court should stay its hand, and leave the complainant free to pursue his remedy in the state court, by intervening in that suit for the assertion and protection of his rights, or to permit him to await here the result of that litigation, and take such further proceedings as may be shown to be necessary and permissible. In order that the complainant's right to redress may not be defeated, he may have leave to dismiss his bill without prejudice so that he may safely intervene in the state court.

"As it is not questioned that the proceedings pleaded in behalf of defendants are still pending in the state court and as the doors of that tribunal are open to all judgment creditors alike, in view of the considerations stated, and of the further fact that many of the interrogatories call for the contents of books and papers which the defendants could be compelled to produce at the instance of complainant, unless such books and papers are in the custody of the state court, as presumably they are, it is an additional ground for our conclusion."

In Powers vs. Blue Grass Building Association, 86 Fed. Rep., 705, 709, Judge Lurton held that if the relief sought involves dominion over the same subject matter, and can

not be effectually granted if dominion over the same be taken by process from the federal court, it is a case where the latter should regard the jurisdiction of the former as exclusive and hold its hands until the court first obtaining jurisdiction has terminated its case, saying:

> "This court could not, with proper respect to itself and for the state court, retain it for the purpose of interpreting the deed, or adjudging the rights of creditors or shareholders thereunder. That subject is within the exclusive jurisdiction of the state court."

And further holding, as we interpret it:

> "Where there are two suits pending in different courts of concurrent jurisdiction, which involve and affect the same subject matter, and where the jurisdiction of neither is complete nor effectual unless it may, if necessary or proper, exercise exclusive jurisdiction of the *res* in litigation, the jurisdiction of the first is exclusive of the second. The old managers (officers named in Section 561, Ky. Stats.) in abdicating their trust as they did when they made the illegal assignment to Clay (in that case but in this case when they made the legal assignment to the Trust Company) have forfeited the confidence of their constituents and should not be restored to power."

We might multiply authorities in support of this question, but deem it unnecessary.

It is quite obvious that the suit filed in the state court on May 12, 1903, and the suit filed in the federal court on May 27, 1903, involve the administration and settlement of the same trust estate between the same parties, and that the relief sought in both can not be granted without a manifest conflict. It is equally obvious, from confessedly

true allegations of the intervening petition of the appellant, that the federal court proceeding complained of was a collusive one, resorted to by the defendants in the state court proceeding for the sole purpose of superseding and defeating the objects of the state court suit.

The resolutions of the stockholders of the Evening Post Company, adopted April 30, 1903, were, in effect, a deed of assignment of all of the property and effects of the Evening Post Company to the Columbia Finance & Trust Company in trust for the payment of the obligations existing against the said Evening Post Company according to their respective priorities. They amounted to an abdication by the officers and stockholders of the Evening Post Company of any further right to control, dispose of and distribute the same to the parties entitled thereto. The trustee, therein named, accepted the said trust and expressly submitted itself to the jurisdiction of the state court. The plaintiffs in the state court suit are beneficiaries expressly provided for in the said trust instrument and as such had the right to institute and prosecute the said state court suit.

The learned chancellor of the state court held that a good cause of action for the relief prayed was set forth in the said state court petition. In the course of his opinion the chancellor of the state court said:

> "This action to settle this trust is not unusual or extraordinary in any respect; on the contrary, it is the usual every-day remedy applied by the courts in cases of this general character. . . . In the case at bar we have a suit in equity over the settlement of an estate held in trust, and the inspection of the books is asked only as relief ancillary to that cause of action." (Pr. Rec. pp. 43, 47).

It was beyond the power of the federal court below to supervise, review and reverse this decision. It had no power to inquire into and determine that the prayer of the petition in the state court went beyond the averments contained in the body of the petition. It exceeded its coordinate authority when it held, in effect, that the state court erred in appointing the appellant as receiver, and also in denying to the appellant the custody of the property committed to it by the state court.

The lower court disregarded the following often reiterated rule of this court:

> "Where a court (of a state) has jurisdiction it has a right to decide every question which occurs in the cause, *and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and that, where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another court.*" (7 How., 624-5.) (Our Italics.)

The judgment, now complained of, does arrest and take away from the state court the right to further proceed and grant any of the relief therein sought. All of the assets of the said Evening Post Company, including its books, papers, etc., are now in the actual possession and control of the United States Circuit Court for the Western District of Kentucky. It has denied the power or right of the state court to any control or jurisdiction over any part thereof. Its judgment (if allowed to stand) as effectually enjoins the said state court from any further exercise of its jurisdic-

tion to grant any of the relief therein sought as a positive writ of prohibition could possibly do. If it were to undertake to enforce obedience to any of its orders or judgments through its duly constituted officers they would be guilty of contempt to the lower court, whose receiver is in the possession of all of the assets, including the books, papers and affairs of the said Evening Post Company, and the other individual and corporate defendants to the said state court suit have asserted the said judicial possession as an excuse for their disobedience of the orderly process of the state court.

In view of this distressingly delicate and embarrassing conflict of jurisdiction the state court properly adopted and followed the analogous precedent approved by this court in Shields v. Coleman, 157 U. S., 168, 182, and ordered and instructed its receiver to intervene in its behalf herein, and to assert and maintain its exclusive right to the custody, administration and settlement of the said trust estate. The appellant obeyed the said instructions and the lower court allowed its petition to be filed, and, with every material allegation thereof confessed to be true, it denied appellant's motion to vacate the order or to compel its receiver to surrender possession of any part of the said subject-matter, and absolutely dismissed its petition. It delivered a very elaborate opinion in support of its said ruling (Pr. Rec. pp. 64 to 80). When this opinion is reduced to its final analysis we believe it will be seen that the said learned Judge reached the following conclusions, to-wit:

1. That the proceedings of the state court are inquirable into and reviewable in the said federal court.

2. That the scope of the petition in the state court had been improperly interpreted by that court, and that it was limited to the claim made to examine the books, etc., and could not be broadened by the prayer into a trust settlement suit. (Pr. Rec. p. 70.)

3. That the liquidating resolutions of April 30, 1903, and the acceptance thereof by the liquidating agent named, did not create a trust in behalf of any of the stockholders. This conclusion was reached in spite of the sixth clause of the said resolutions, reading as follows:

> "The said liquidator shall, from the proceeds of the sale of the property, pay all of the debts of the corporation, and the balance, if any, shall be distributed among the stockholders according to their legal rights."

And also the first clause thereof, to wit:

> "That the Columbia Finance & Trust Company be and it is hereby appointed liquidator of the affairs of the corporation, with directions to operate for the use of the stockholders the affairs and business of said corporation as they have been operated until the property can be properly advertised and sold, and the possession thereof delivered to the purchaser." (Pr. Rec., pp. 2-3.)

4. That all of the decisions of this and inferior federal courts tending to sustain the contention of appellant are mere *dicta*, and not binding on it.

5. That "The mere priority of commencement of litigation is not, but the priority of judicial seizure is, the test of jurisdiction over the *res* in all cases where property is the subject of contention. This test is

simple, direct and practical, and draws a line which is palpable. It is of easy solution and can not be open to serious mistake. Whenever suits are pending in two or more courts of concurrent powers, in each of which, at the instance of different plaintiffs, it is sought to control or to subject to the demands of creditors, the same property, that court alone has the right to do so which first gets the property within its grasp by some recognized mode of judicial seizure, and that, too, without regard to the question which suit was first instituted." (Pr. Rec., p. 78.)

6. That it is always open to a federal court, at the instance of one of its judgment creditors, to judicially seize the property of the debtor corporation, whether the said property be then in course of administration in a state court or not.

7. That having thus first actually seized such property, and placed the same into the hands of a receiver of its own appointment, it will continue to hold and administer the same in spite of the fact that a previously instituted suit in a state court of concurrent jurisdiction was then pending against the trust property seeking to subject it to the payment of all demands against it, including the demand of the said federal court creditor.

We claim that the said conclusions and each of them are erroneous. In the first place the lower court ignored Section 90 of the Civil Code of Practice of Kentucky, constituting part of the statute law of that state. This section reads as follows:

"The petition must state facts which constitute a cause of action in favor of the plaintiff against the

> defendant, and must demand the specific relief to which the plaintiff considers himself entitled; and may contain a general prayer for any other relief to which the plaintiff may appear to be entitled. If no defense be made, the plaintiff can not have judgment for any relief not specifically demanded; *but if defense be made he may have judgment for other relief, under a prayer therefor.*" (Our Italics.)

All of the defendants answered the state court suit before any suit was filed in the federal court. The prayer of the petition, as decided by the state court, was amply justified by the averments contained in the body thereof. We insist that the lower co-ordinate court had no power to review or reverse that ruling.

In the second place the established principle respecting comity between courts of concurrent jurisdiction in the same territory is, as repeatedly stated in the decisions of this court and other inferior federal courts, as follows:

> "The case is one for the application of the rule that the court which first takes cognizance of *the controversy* is entitled to retain jurisdiction to the end of the litigation, and to take possession and control of the subject-matter of the investigation to the exclusion of all interference of other courts of co-ordinate jurisdiction." (Judd v. Tel. Co., 31 Fed. Rep., 183.)

It is stated by this court in Farmers' Loan Co. v. Lake St. Rd. Co., 177 U. S. 61, as follows:

> "This rule is not restricted in its application to cases where property has been *actually* seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits

are brought to enforce liens against specific property, to marshal assets, administer trusts or liquidate insolvent estates, and in suits of a similar nature, *where, in the progress of the litigation the court may be compelled to assume the possession and control of the property to be affected.*" (Our Italics.)

There can be no doubt but that the entire property and estate of the said Evening Post Company was involved in and affected by the state court suit.

If the rule were not as thus stated a federal court of concurrent jurisdiction with a state court could, at any time, interpose and stop the entire judicial machinery, in any state court suit, regardless of when the latter suit was begun. This statement is forcibly illustrated by the case at bar. The state court had acquired full jurisdiction over the subject-matter, as well as the parties, on May 12, 1903. All of the defendants had been served, had entered their appearances and had actually answered, expressly submitting themselves to the jurisdiction of that court. The state court had actually been engaged two days in the trial of preliminary and ancillary motions respecting the said subject-matter. During the progress of this trial, and in order to anticipate and defeat the objects thereof, the appellees secretly rushed into the federal court and collusively caused a judgment at law to be there entered *instanter*, and a bill in equity to be filed thereon and a receiver appointed to take charge of identically the same subject-matter as was then already involved in the state court. It is alleged in the intervening petition, and it is nowhere denied, that this federal court scheme was resorted to at the instance and request and by the procure-

ment of the defendants in the state court suit "for the express purpose of ousting the said state court from its previously acquired jurisdiction." (Rec., 19.)

It is further therein alleged, and admitted, for the purposes of this hearing, to be true, as follows:

> "That if this court, through its receiver aforesaid, continues in the custody, possession and control of the said estate of the Evening Post Company the effect thereof will be to supersede and deprive the said Jefferson Circuit Court, Chancery Branch, First Division, aforesaid, of its right to proceed, try and determine the cause of action therein asserted involving identically the same subject-matter and the administration and liquidation of identically the same trust estate between the same parties." (Rec., 22.)

In the third place it is not the law that a federal court of concurrent jurisdiction with a state court has any revisory power over orders and judgments entered by the said state court. As already shown this court has repeatedly held that:

> "Whether its (state court) decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court."

We feel that we should not conclude this brief without adverting to some particular averments of the bill herein, and features of the case and the action of the defendants in relation thereto.

The record shows that every stockholder of the Evening Post Company was made a party to and appeared in the state court suit before any of the federal court pro-

ceedings were inaugurated. The only stockholders, not made parties to this bill herein, are the plaintiffs in the state court suit, and J. M. Atherton and Laura G. Boyle. The record shows that B. G. Boyle, the husband of the said Laura G. Boyle, is named as a defendant to the bill herein, and he at once, upon the filing thereof, entered his appearance and consented to the granting of the relief prayed, and that the said J. M. Atherton was present and signed the bond of the federal court receiver as surety, and became one of his lessees of the said entire trust property. Hence we are warranted in the statement that the only stockholders, not in effect parties to the said federal court proceeding, were the plaintiffs in the said state court suit. All creditors, so far as then known, were in like manner brought before the state court, but none were named as parties to the federal court bill other than complainant.

In the face of these facts it is quite extraordinary that the bill should aver that three different theories are advanced by the stockholders in reference to the property of the said Evening Post Company as it existed upon the day its charter life expired (May 1, 1903), to wit:

> "(a) That by virtue of the statute it continued in existence with capacity to sue and be sued."
>
> "(b) That by virtue of the statute all of its assets vested in its officers in trust to dispose of the same, and out of the proceeds of the sale thereof to pay the creditors.
>
> "(c) That by virtue of the resolutions of the stockholders at their meeting of April 30, 1903, all said assets have vested in the defendant, the Columbia Finance & Trust Company, as liquidator, whose duty

it is to dispose of the said assets and out of the proceeds to pay the debts." (Rec., 3-4.)

And then follows this allegation, to wit:

"That the stockholders of the said defendant, Evening Post Company, are at variance among themselves and such disputes are likely to produce such action as will greatly injure the property of the Evening Post Company and make it of much less value than the amount of its debts." (Rec., 4.)

In view of these allegations it would have been naturally supposed that some stockholder asserting some particular one of these conflicting theories to the exclusion of the others would have been named as a defendant. Such was not, however, the case. This record satisfactorily demonstrates that whatever might have been the variances of views that existed between the stockholders prior to April 30, 1902, they were all adjusted and settled by the resolutions then adopted, and that trust is fully set out in the said bill. All of the stockholders, except the plaintiffs in the state court suit, voted for the said trust, and thereby estopped themselves from insisting upon any other theory. The plaintiffs in the state court suit accepted and ratified the plan set forth in the said resolutions, and predicated their cause of action thereon to enforce the terms of the trust therein created. They made and expressly named all of the other beneficiaries of the said trust, whether creditors or stockholders, so far as known to them, parties to the said suit.

The resolutions of April 30, 1903, when accepted by the trustee therein named, constituted a contract primarily for

the benefit of the creditors, and secondarily for the benefit of the stockholders. All were beneficiaries thereunder and interested therein.

The plaintiffs in the state court had the right to maintain their suit. Sections 428, 432 and 438 of the Civil Code of Kentucky confer such authority. They read as follows:

> "428. 1. Who may institute action. A representative, legatee, distributee or creditor of a deceased person may bring an action in equity for the settlement of his estate.
>
> "2. Who must be made parties. The representatives of the decedent and all persons having a lien upon or an interest in the property left by the decedent, or any part thereof, and the creditors of the decedent, so far as known to the plaintiff, must be parties to the action as plaintiffs or defendants."
>
> "432. A creditor appearing before the commissioner and presenting his claim becomes thereby a party to the action, and is concluded by the final judgment of the court allowing or rejecting his claim."
>
> "438. The foregoing provisions of this chapter shall, so far as applicable, regulate proceedings for the sale of property held in trust, by virtue of the provisions of article two, chapter forty-four, General Statutes (now article two, chapter fifty-four, Kentucky Statutes) or assigned by a debtor for the payment of debts generally; but sub-section two of section four hundred and twenty-eight shall not be so construed as to require all creditors holding liens upon the property by virtue of the statute, or under the deed of assignment, to be made parties."

The state court acquired complete jurisdiction over the trust estate, and the right to administer, liquidate, settle and distribute the same among the parties interested therein more than two weeks before the jurisdiction of the lower court was invoked.

We, therefore, conclude this argument by quoting from the opinion in the case of Rodgers v. Pitt, 96 Fed. Rep. 670, as follows:

> "The general rule is well settled that, where different courts have concurrent jurisdiction, the court which first acquired jurisdiction of the parties, the subject-matter, the specific thing, or the property in controversy, is entitled to retain the jurisdiction to the end of the litigation, without interference by any other court. This rule is important to the exercise of jurisdiction by the courts whose powers are liable to be exerted within the same spheres and over the same subjects and parties. There is but one safe road for all the courts to follow. By adhering to this rule, the comity of the courts, national and state, is maintained, the rights of the respective parties preserved, and the ends of justice secured, and all unnecessary conflicts avoided. Any other rule would be liable at any time to lead to confusion, if not open collision, between the courts, which might bring about injurious and calamitous results. This rule is elementary law, and a citation of all the authorities in its support would be endless and useless."

We respectfully ask that this rule be followed in this case, and that the decree holding that the lower court had jurisdiction to administer the said estate, exclusive of the

state court, and dismissing the appellants' intervening petition be reversed, with appropriate directions for further proceedings.

JOHN L. DODD,
DAVID W. BAIRD,
Attorneys for Appellants.

J. C. DODD,
AARON KOHN,
T. W. SPINDLE,
Of Counsel.